

# EXHIBIT C

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**Subject:** RE: In re Insulin Pricing Litigation, MDL No. 3080 - Draft Privilege Order (3-18 update)

Counsel,

As promised at the close of our last conferral, below is a sketch of Plaintiffs' Position regarding the privilege protocol. Talk to you all in a few hours.

-Pearl

## **Plaintiffs' March 18 Position re Privilege Protocol**

### Formatting and rules

Plaintiffs cannot agree to Defendants' proposed privilege protocol. Plaintiffs require the following format and rules for any proposed protocol:

- Privilege Logs to be produced on a rolling basis, but no later than 30 days after a withheld

document would have otherwise been produced but for the claim of privilege.

- Fully withheld and redacted documents will be logged in the traditional sense, including a narrative description.
- There is no limit to the number of challenges that must be brought at one time.
- There is no limit as to the timing a privilege challenge may be raised.
- The process for challenging should track Plaintiffs' proposed protocol.
- Downgrade productions should be made within ten (10) days of when a producing party withdraws in whole or in part, the initially asserted privilege.
- Claw back procedure should follow Plaintiffs' proposed protocol timing and methods.
- Consistent with Rule 26, a party may sequester one copy of a clawed back document for the purposes of challenging the privilege claim.

Plaintiffs will compromise on the following:

- For hard copy documents, if the information that is otherwise required for logging pursuant to this protocol is facially apparent on the document itself, then such data points should be disclosed on the privilege log. In instances where the information is not facially apparent, then the narrative description should provide as much related detail as possible.

#### Logging exemptions

Plaintiffs continue to consider Logging Exemptions, though we can resolve:

- Plaintiffs will accept "i" in the body of Defendants' 2/24 protocol, but we reject Defendants' modification to footnote 3.

Plaintiffs' compromise positions re subsections I(C)(1)(iii)-(iv):

- Plaintiffs will accept subsection iii as proposed in Defendants' 2/24 protocol, but only on the condition that:
  - "outside counsel" in subsection iii is changed to "litigation counsel".
  - The scope of subsection iv must be parallel to subsection iii in all relevant respects.
  - Privileged material withheld based on an assertion of the common interest doctrine or joint defense doctrine, that is not exempt from logging under subsection iii or subsection iv, may be logged using a categorical log.

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